



January 23, 2002

## SENATE BILL No. 52

DIGEST OF SB 52 (Updated January 17, 2002 2:43 PM - DI 44)

**Citations Affected:** IC 6-2.5; IC 6-8.1; IC 36-8.

**Synopsis:** Sourcing of mobile telecommunications taxes. Implements the federal Mobile Telecommunications Sourcing Act, which provides that taxes, charges, and fees levied on wireless telephone service shall be paid to the jurisdiction where the customer's primary use of the service occurs, irrespective of where the wireless telephone service originates, terminates, or passes through. Makes conforming changes in the statutes concerning the sales tax on intrastate telecommunications service and the monthly emergency wireless enhanced 911 fee on wireless service. Specifies that implementation of the federal act does not authorize the imposition of new taxes, charges, or fees that are not otherwise authorized by law. Authorizes a provider of wireless telephone service, in the absence of an electronic data base provided by the department of state revenue or another designated data base provider, to rely on enhanced ZIP codes for purposes of assigning customer addresses to taxing jurisdictions. Provides that "bundled" offerings of taxable and nontaxable wireless service are considered taxable unless the provider of the service provides information that supports the nontaxability of a part of those services.

**Effective:** August 1, 2002.

**Borst**

November 20, 2001, read first time and referred to Committee on Finance.  
January 22, 2002, amended, reported favorably — Do Pass.

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January 23, 2002

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

## SENATE BILL No. 52

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 6-2.5-4-6 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE AUGUST 1, 2002]: Sec. 6. (a) As used in  
3 this section, "telecommunication services" means the transmission of  
4 messages or information by or using wire, cable, fiber optics, laser,  
5 microwave, radio, satellite, or similar facilities. The term does not  
6 include value added services in which computer processing  
7 applications are used to act on the form, content, code, or protocol of  
8 the information for purposes other than transmission.  
9 (b) A person is a retail merchant making a retail transaction when  
10 the person:  
11 (1) furnishes or sells an intrastate telecommunication service; and  
12 (2) receives gross retail income from billings or statements  
13 rendered to customers.  
14 (c) Notwithstanding subsection (b), a person is not a retail merchant  
15 making a retail transaction when:  
16 (1) the person provides, installs, constructs, services, or removes  
17 tangible personal property which is used in connection with the

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furnishing of the telecommunication services described in subsection (a);

(2) the person furnishes or sells the telecommunication services described in subsection (a) to another person described in this section or in section 5 of this chapter; ~~or~~

(3) the person furnishes telecommunications services described in subsection (a) to another person who is using a prepaid telephone calling card or prepaid telephone authorization number described in ~~IC 6-2.5-4-13~~; **section 13 of this chapter; or**

**(4) the person furnishes intrastate mobile telecommunications service (as defined in IC 6-8.1-15-7) to a customer with a place of primary use that is not located in Indiana (as determined under IC 6-8.1-15).**

SECTION 2. IC 6-8.1-15 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE AUGUST 1, 2002]:

**Chapter 15. Taxing Situs of Mobile Telecommunications Service**

**Sec. 1. As used in this chapter, "charges for mobile telecommunications service" means any charge for or associated with the provision of commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations as in effect on June 1, 1999, or any charge for or associated with a service provided as an adjunct to a commercial mobile radio service, that is billed to the customer by or for the customer's home service provider regardless of whether individual transmissions originate or terminate within the licensed service area of the home service provider.**

**Sec. 2. (a) As used in this chapter, except as provided in subsection (b), "customer" means:**

**(1) the person or entity that contracts with the home service provider for mobile telecommunications service; or**

**(2) if the end user of mobile telecommunications service is not the contracting party, the end user of the mobile telecommunications service, but this subdivision applies only for the purpose of determining the place of primary use.**

**(b) The term "customer" does not include:**

**(1) a reseller of mobile telecommunications service; or**

**(2) a serving carrier under an arrangement to serve the customer outside the home service provider's licensed service area.**

**Sec. 3. As used in this chapter, "designated data base provider" means a corporation, an association, or other entity representing**



the state and political subdivisions of the state that is responsible for providing an electronic data base under section 15 of this chapter and approved by the department.

Sec. 4. As used in this chapter, "enhanced ZIP code" means a United States postal ZIP code of nine (9) or more digits.

Sec. 5. As used in this chapter, "home service provider" means the facilities based carrier or reseller with which the customer contracts for the provision of mobile telecommunications service.

Sec. 6. As used in this chapter, "licensed service area" means the geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio service to the customer.

Sec. 7. As used in this chapter, "mobile telecommunications service" means commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations as in effect on June 1, 1999.

Sec. 8. As used in this chapter, "place of primary use" means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be:

- (1) the residential street address or the primary business street address of the customer; and
- (2) within the licensed service area of the home service provider.

Sec. 9. As used in this chapter, "prepaid telephone calling service" means the right to purchase exclusively telecommunications service that must be paid for in advance that enables the origination of calls using an access number or authorization code, or both, whether manually or electronically dialed, if the remaining amount of units of service that has been prepaid is known by the provider of the prepaid service on a continuous basis.

Sec. 10. As used in this chapter, "reseller" means a provider who purchases telecommunications service from another telecommunications service provider and then resells, uses as a component part of, or integrates the purchased service into a mobile telecommunications service. The term does not include a serving carrier with which a home service provider arranges for the service to its customers outside the home service provider's licensed service area.

Sec. 11. As used in this chapter, "serving carrier" means a facilities based carrier providing mobile telecommunications

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1 service to a customer outside a home service provider's or  
2 reseller's licensed service area.

3 **Sec. 12. The general assembly finds that:**

4 (1) the United States Congress has enacted the Mobile  
5 Telecommunications Sourcing Act (4 U.S.C. 116 et seq.) for  
6 the purpose of establishing uniform nationwide sourcing rules  
7 for state and local taxation of mobile telecommunications  
8 service;

9 (2) the federal Mobile Telecommunications Sourcing Act  
10 provides that taxes on mobile telecommunications service  
11 shall be paid to the jurisdiction where the customer's primary  
12 use of the service occurs, irrespective of where the mobile  
13 telecommunications service originates, terminates, or passes  
14 through; and

15 (3) it is desirable to implement the federal Mobile  
16 Telecommunications Sourcing Act in Indiana.

17 **Sec. 13. (a) Except as provided by section 20 of this chapter, this**  
18 **chapter applies to:**

19 (1) the gross retail tax imposed on mobile telecommunications  
20 service under IC 6-2.5-4-6;

21 (2) the monthly emergency wireless enhanced 911 fee imposed  
22 on mobile telecommunications service under IC 36-8-16.5;  
23 and

24 (3) any other tax, charge, or fee levied by the state or a taxing  
25 jurisdiction within Indiana as a fixed charge for each  
26 customer or measured by gross amounts charged to  
27 customers for mobile telecommunications service, regardless  
28 of whether the tax, charge, or fee is imposed on the vendor or  
29 customer of the service and regardless of the terminology  
30 used to describe the tax, charge, or fee;

31 on bills for mobile telecommunications service issued to customers  
32 after July 31, 2002.

33 **(b) This chapter does not apply to:**

34 (1) any tax, charge, or fee levied upon or measured by the net  
35 income, capital stock, net worth, or property value of the  
36 provider of mobile telecommunications service;

37 (2) any tax, charge, or fee that is applied to an equitably  
38 apportioned amount that is not determined on a transactional  
39 basis;

40 (3) any tax, charge, or fee that:

41 (A) represents compensation for a mobile  
42 telecommunications service provider's use of public

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rights-of-way or other public property; and

(B) is not levied by the taxing jurisdiction as a fixed charge for each customer or measured by gross amounts charged to customers for mobile telecommunication service;

(4) any generally applicable business and occupation tax that is imposed by the state, is applied to gross receipts or gross proceeds, is the legal liability of the home service provider, and that statutorily allows the home service provider to elect to use the sourcing method required in this section; or

(5) the determination of the taxing situs of:

(A) prepaid telephone calling service; or

(B) air-ground radiotelephone service as defined in Section 22.99 of Title 47 of the Code of Federal Regulations as in effect June 1, 1999.

Sec. 14. (a) Notwithstanding any other law, mobile telecommunications service provided in a taxing jurisdiction to a customer, the charges for which are billed by or for the customer's home service provider, are considered to be provided by the customer's home service provider.

(b) All charges for mobile telecommunications service that are considered to be provided by the customer's home service provider under this chapter are authorized to be subjected to tax, charge, or fee by the taxing jurisdictions whose territorial limits encompass the customer's place of primary use, regardless of where the mobile telecommunication service originates, terminates, or passes through.

(c) This chapter does not:

(1) authorize a taxing jurisdiction to impose a tax, charge, or fee that the jurisdiction is not otherwise authorized to impose; or

(2) modify, impair, supersede, or authorize the modification, impairment, or supersession of the law of any taxing jurisdiction pertaining to taxation except as expressly provided by this chapter.

Sec. 15. (a) The department may provide an electronic data base to a home service provider or, if the department does not provide an electronic data base to home service providers, the designated data base provider may provide an electronic data base to a home service provider. The department or the designated data base provider shall provide the data base in a format that complies with the requirements of the federal Mobile Telecommunications Sourcing Act (4 U.S.C. 116 et seq.).

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(b) The department or designated data base provider shall provide notice of the availability of the then current electronic data base and any subsequent revisions of the data base by publication in the manner normally employed for the publication of informational tax, charge, or fee notices to taxpayers in Indiana.

(c) A home service provider using the data contained in an electronic data base described in this section shall be held harmless from any tax, charge, or fee liability that otherwise would be due solely as a result of any error or omission in the data base. The home service provider shall reflect changes made to the data base during a calendar quarter not later than thirty (30) days after the end of the calendar quarter.

Sec. 16. (a) If an electronic data base is not provided under section 15 of this chapter, a home service provider shall be held harmless from any tax, charge, or fee liability in Indiana that otherwise would be due solely as a result of an assignment of a street address to an incorrect taxing jurisdiction if, subject to section 18 of this chapter, the home service provider employs an enhanced ZIP code to assign each street address to a specific taxing jurisdiction for each level of taxing jurisdiction and exercises due diligence at each level of taxing jurisdiction to ensure that each street address is assigned to the correct taxing jurisdiction. If an enhanced ZIP code overlaps boundaries of taxing jurisdictions of the same level, the home service provider must designate one (1) specific jurisdiction within the enhanced ZIP code for use in taxing the activity for that enhanced ZIP code for each level of taxing jurisdiction. Any enhanced ZIP code assignment changed in accordance with section 18 of this chapter is considered to be in compliance with this section.

(b) For purposes of this section, there is a rebuttable presumption that a home service provider has exercised due diligence if the home service provider demonstrates that it has:

- (1) expended reasonable resources to implement and maintain an appropriately detailed electronic data base of street address assignments to taxing jurisdictions;
- (2) implemented and maintained reasonable internal controls to promptly correct misassignments of street addresses to taxing jurisdictions; and
- (3) used all reasonably obtainable and usable data pertaining to municipal annexation, incorporations, reorganizations, and any other changes in jurisdictional boundaries that materially affect the accuracy of the data base.



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(c) This section applies to a home service provider that is in compliance with the requirements of this section until the later of:

(1) eighteen (18) months after the nationwide standard numeric code described in the federal Mobile Telecommunications Sourcing Act (4 U.S.C. 116 et seq.) has been approved by the Federation of Tax Administrators and the Multistate Tax Commission; or

(2) six (6) months after the department or a designated data base provider provides a data base as described in section 15 of this chapter.

Sec. 17. (a) A home service provider is responsible for obtaining and maintaining the customer's place of primary use. Subject to section 18 of this chapter, a home service provider may rely on the applicable residential or business street address supplied by the home service provider's customer and is not liable for any additional taxes, charges, or fees based on a different determination of the place of primary use for taxes, charges, or fees that are customarily passed on to the customer as a separate itemized charge if the reliance on information provided by its customer is in good faith.

(b) Except as provided in section 18 of this chapter, a home service provider may treat the address used by the home service provider for tax purposes for any customer under a service contract or agreement in effect on or before July 28, 2002, as that customer's place of primary use for the remaining term of the service contract or agreement, excluding any extension or renewal of the service contract or agreement, for purposes of determining the taxing jurisdictions to which taxes, charges, or fees on charges for mobile telecommunications service are remitted.

Sec. 18. (a) The department may determine that the address used for purposes of determining the taxing jurisdictions to which taxes, charges, or fees for mobile telecommunications service are remitted does not meet the definition of "place of primary use" in this chapter and give binding notice to the home service provider to change the place of primary use on a prospective basis from the date of notice of determination. Before the department gives a notice of determination, the customer must be given an opportunity to demonstrate in accordance with department rules and administrative procedures that the address is the customer's place of primary use.

(b) The department may determine that the assignment of a taxing jurisdiction by a home service provider under section 16 of

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1 this chapter does not reflect the correct taxing jurisdiction and give  
 2 binding notice to the home service provider to change the  
 3 assignment on a prospective basis from the date of notice of  
 4 determination. The home service provider must be given an  
 5 opportunity to demonstrate in accordance with department rules  
 6 and administrative procedures that the assignment reflects the  
 7 correct taxing jurisdiction.

8 **Sec. 19.** If charges for nontaxable mobile telecommunications  
 9 service are aggregated with and not separately stated from charges  
 10 that are subject to taxation, the charges for nontaxable mobile  
 11 telecommunications service are subject to taxation unless the home  
 12 service provider can reasonably identify charges not subject to the  
 13 tax, charge, or fee from its books and records that are kept in the  
 14 regular course of business.

15 **Sec. 20.** Notwithstanding any other provision of this chapter,  
 16 this chapter does not apply to any tax, charge, or fee levied by the  
 17 state or a taxing jurisdiction within Indiana beginning on the date  
 18 of entry of a final judgment on the merits by a court that:

- 19 (1) is based on federal law;
- 20 (2) is no longer subject to appeal; and
- 21 (3) substantially limits or impairs the essential elements of the
- 22 federal Mobile Telecommunications Sourcing Act (4 U.S.C.
- 23 116 et seq.).

24 **Sec. 21. (a)** If a customer believes that an amount of tax, charge,  
 25 or fee or an assignment of place of primary use or taxing  
 26 jurisdiction included on a bill under this chapter is erroneous, the  
 27 customer shall notify the home service provider in writing. The  
 28 customer shall include in the written notification the street address  
 29 for the customer's place of primary use, the account name and  
 30 number for which the customer seeks a correction, a description of  
 31 the error asserted by the customer, and any other information that  
 32 the home service provider reasonably requires to process the  
 33 request.

34 **(b)** Within sixty (60) days after receiving a notice under this  
 35 section, the home service provider shall review its records to  
 36 determine the customer's taxing jurisdiction. If the review shows  
 37 that the amount of tax, charge, or fee or assignment of place of  
 38 primary use or taxing jurisdiction is in error, the home service  
 39 provider shall correct the error and refund or credit the amount  
 40 of tax, charge, or fee erroneously collected from the customer for  
 41 a period of up to two (2) years. If the review shows that the amount  
 42 of tax, charge, or fee or assignment of place of primary use or



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1     taxing jurisdiction is correct, the home service provider shall  
 2     provide a written explanation to the customer.

3     (c) The procedures set forth in this section are the first course  
 4     of remedy available to a customer seeking correction of assignment  
 5     of place of primary use or taxing jurisdiction, or a refund of or  
 6     other compensation for taxes, charges, or fees erroneously  
 7     collected by the home service provider. No cause of action based  
 8     upon a dispute arising from the collection of any such taxes,  
 9     charges, or fees shall accrue until a customer has exhausted the  
 10    remedies set forth in this section.

11    SECTION 3. IC 36-8-16.5-25 IS AMENDED TO READ AS  
 12    FOLLOWS [EFFECTIVE AUGUST 1, 2002]: Sec. 25. (a) As used in  
 13    this section, "customer" and "place of primary use" have the  
 14    meanings set forth in IC 6-8.1-15.

15    (b) Except as provided in section 34 of this chapter, the board shall  
 16    assess a monthly emergency wireless enhanced 911 fee on each CMRS  
 17    mobile telephone number ~~that has a billing address in Indiana~~  
 18    **assigned to a customer with a place of primary use in Indiana. A**  
 19    **customer's place of primary use shall be determined in the manner**  
 20    **provided by IC 6-8.1-15.**

21    SECTION 4. IC 36-8-16.5-30 IS AMENDED TO READ AS  
 22    FOLLOWS [EFFECTIVE AUGUST 1, 2002]: Sec. 30. (a) As used in  
 23    this section, "customer" and "place of primary use" have the  
 24    meanings set forth in IC 6-8.1-15.

25    (b) Except as provided in section 34 of this chapter, each CMRS  
 26    provider, as part of its monthly billing process, shall bill each CMRS  
 27    mobile telephone number **assigned to a customer with a place of**  
 28    **primary use in Indiana** for the emergency wireless enhanced 911 fee.  
 29    **A customer's place of primary use shall be determined in the**  
 30    **manner provided by IC 6-8.1-15.** The CMRS provider may list the  
 31    fee as a separate line item on each bill. If a CMRS provider receives a  
 32    partial payment for a monthly bill from a CMRS subscriber, the CMRS  
 33    provider shall apply the payment against the amount the CMRS  
 34    subscriber owes to the CMRS provider before applying the payment  
 35    against the fee.

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## COMMITTEE REPORT

Mr. President: The Senate Committee on Finance, to which was referred Senate Bill No. 52, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 8, between lines 23 and 24, begin a new paragraph and insert:

**"Sec. 21. (a) If a customer believes that an amount of tax, charge, or fee or an assignment of place of primary use or taxing jurisdiction included on a bill under this chapter is erroneous, the customer shall notify the home service provider in writing. The customer shall include in the written notification the street address for the customer's place of primary use, the account name and number for which the customer seeks a correction, a description of the error asserted by the customer, and any other information that the home service provider reasonably requires to process the request.**

**(b) Within sixty (60) days after receiving a notice under this section, the home service provider shall review its records to determine the customer's taxing jurisdiction. If the review shows that the amount of tax, charge, or fee or assignment of place of primary use or taxing jurisdiction is in error, the home service provider shall correct the error and refund or credit the amount of tax, charge, or fee erroneously collected from the customer for a period of up to two (2) years. If the review shows that the amount of tax, charge, or fee or assignment of place of primary use or taxing jurisdiction is correct, the home service provider shall provide a written explanation to the customer.**

**(c) The procedures set forth in this section are the first course of remedy available to a customer seeking correction of assignment of place of primary use or taxing jurisdiction, or a refund of or other compensation for taxes, charges, or fees erroneously collected by the home service provider. No cause of action based upon a dispute arising from the collection of any such taxes, charges, or fees shall accrue until a customer has exhausted the remedies set forth in this section."**

and when so amended that said bill do pass.

(Reference is to SB 52 as introduced.)

BORST, Chairperson

Committee Vote: Yeas 13, Nays 0.

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